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JOINT PETITION OF

**NUI CORPORATION,
VGC ACQUISITION, INC.,
and
VIRGINIA GAS COMPANY**

CASE NO. PUA000079

**For approval of agreement
and plan of merger under
Chapter 5 of Title 56
of the Code of Virginia**

REPORT OF ALEXANDER F. SKIRPAN, JR., HEARING EXAMINER

February 21, 2001

The Utility Transfers Act¹ requires prior approval of the Commission before anyone may acquire or dispose of control of a Virginia public utility. NUI Corporation (“NUI”), VGC Acquisition, Inc. (“Acquisition”), and Virginia Gas Company (“VGC”) (collectively, “Petitioners”) seek approval of the transfer of ownership and control of VGC’s ownership interest in its three Virginia public utilities. Because one of these public utilities was in the process of constructing a Commission-approved gas transmission pipeline, this case enjoyed significant public interest.

HISTORY OF THE CASE

On September 28, 2000, Petitioners filed a joint petition with the Commission, pursuant to the Utility Transfers Act, seeking approval of a proposed merger that included the transfer and control of VGC’s ownership interest in the following Virginia public utilities: Virginia Gas Distribution Company (“VG Distribution”), Virginia Gas Storage Company (“VG Storage”), and Virginia Gas Pipeline Company (“VG Pipeline”) (collectively, “VG Utilities”). On October 10, 2000, the Commission entered an Order for Notice and Comment which ordered Petitioners to publish public notice, gave interested persons the opportunity to comment and request a hearing, and directed Staff to file a report detailing the results of its review of the joint petition.

On October 27, 2000, the Commission issued an Order for Additional Notice, adding Scott County to the counties wherein the Petitioners were required to publish notice. On November 15, 2000, the Commission entered an Order extending both the time for Staff to file its report and the period for Commission consideration of the petition.

¹ Va. Code § 56-88 *et seq.*

This case generated considerable public interest, with several individuals adversely affected by the construction of a pipeline by VG Pipeline opposing the merger, and several business and political leaders favoring the merger. Based on public comments and requests for hearing, on November 29, 2000, the Commission issued an Order Establishing Hearing and Additional Procedural Schedule which, among other things, established a procedural schedule for the filing of prefiled testimony and exhibits, scheduled a public hearing for January 16, 2001, to be held in the Roanoke County Courthouse, and assigned the matter to a Hearing Examiner.

On January 16, 2001, a public hearing was convened at 10:00 a.m. in Courtroom 4 of the Roanoke County Courthouse, 305 East Main Street, Salem, Virginia. Fifteen public witnesses appeared. Representing the Petitioners were JoAnne L. Nolte, Esquire, and W. Bradford Stallard, Esquire. Protestants Lawrence Mason and Andrew Gentiluomo appeared *pro se*. C. Meade Browder, Jr., Esquire, represented the Staff. Filed with this Report are transcripts from the hearing.

SUMMARY OF THE RECORD

Currently, VGC engages, either directly or through its subsidiaries, in natural gas marketing, storage, distribution, gathering, exploration, and production, and in the distribution of propane.² VGC's principal assets are located in southwestern Virginia.³ In order to maximize the value of its assets, VGC is aggressively expanding its natural gas storage, pipeline, and distribution capabilities.⁴ Moreover, VGC is experiencing difficulty in raising capital at reasonable cost.⁵ Indeed, VGC claims that the declining price of its stock eliminated equity as a source of new capital.⁶ Likewise, VGC was technically in default of certain restrictive covenants for debt acquired in 1998.⁷ Thus, VGC found new debt capital to be either too costly or unavailable.⁸ Based on the advice of its investment bankers, VGC began a search for interested business partners for acquisition or investment in VGC.⁹

Prior to the proposed merger, VGC owned 100% of the following subsidiaries: (i) Virginia Gas Exploration Company ("VG Exploration"), (ii) VG Pipeline, (iii) Virginia Gas Propane Company ("VG Propane"), and (iv) Virginia Gas Marketing Company ("VG Marketing").¹⁰ Also, pre-merger, VGC owned 50% of VG Distribution and VG Storage.¹¹ VG Pipeline, VG Distribution, and VG Storage are public utilities as defined in Virginia Code § 56-88 of the Utility Transfers Act. "No person, . . . shall, directly or indirectly, acquire or dispose of

² Exhibit MLE-4, at 5.

³ *Id.*

⁴ Exhibit MLE-3, at 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Exhibit MLE-4, at Appendix 2, Exhibit 1.65.

¹¹ *Id.*

control of . . . a public utility . . . , or all of the assets thereof, without the prior approval of the Commission.”¹² Further background on each of the VG Utilities is provided below:

VG Pipeline is a wholly owned subsidiary of VGC that provides intrastate natural gas transmission services in Smyth, Pulaski, and Wythe Counties, Virginia.¹³ VG Pipeline is certificated to expand its pipeline service into Roanoke, Montgomery, and Franklin Counties, Virginia.¹⁴ VG Pipeline operates approximately 39.5 miles of transmission pipeline, with an additional 34.5 miles of transmission pipeline from Wytheville to Radford coming on-line by the end of 2000.¹⁵ During 2001, VG Pipeline plans to construct an additional 45 miles of transmission pipeline, providing service from Radford to Roanoke and increasing pipeline capacity to 35,000 Dth’s.¹⁶ In addition, VG Pipeline operates an underground natural gas storage facility with a capacity of approximately 0.8 Bcf located in Washington and Smyth Counties, Virginia, serving ten utility customers located predominately in southwestern Virginia and eastern Tennessee.¹⁷

VG Distribution is 50% owned by VGC and 50% by a private investor.¹⁸ According to the Petitioners, “VG Distribution provides natural gas distribution services to approximately 300 industrial, commercial, and residential customers located in Russell and Buchanan Counties.”¹⁹

VG Storage is 50% owned by VGC and 50% by a private investor.²⁰ VG Storage operates an underground natural gas storage facility with a capacity of approximately 2.1 Bcf located in Scott and Washington Counties, Virginia.²¹ VG Storage serves utilities located predominately in southwestern Virginia and eastern Tennessee.²²

Under the proposed merger agreement, VGC’s ownership interests in the VG Utilities will pass to either NUI or Acquisition, a wholly owned subsidiary of NUI, formed by NUI for the sole purpose of effecting the merger.²³ According to the Petitioners, “NUI is a multi-state energy sales, services and distribution company incorporated in New Jersey in 1969.”²⁴ NUI provides natural gas distribution services to more than 371,000 customers through the following operating utilities:²⁵

¹² Va. Code § 56-88.1

¹³ Exhibit MLE-4, at 7.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*; Exhibit MLE-6.

¹⁷ Exhibit MLE-4, at 7.

¹⁸ *Id.* at 8.

¹⁹ *Id.*

²⁰ *Id.* at 7.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 1-2, 4.

²⁴ *Id.* at 4.

²⁵ *Id.*

Utility Name	State
Elizabethtown Gas	New Jersey
City Gas Company	Florida
North Carolina Gas	North Carolina
Valley Cities Gas	Pennsylvania
Elkton Gas	Maryland
Waverly Gas	New York

In addition, NUI provides retail gas sales, wholesale energy brokerage, customer information systems, environmental project development, and telecommunications products and services through the following wholly owned subsidiaries: NUI Energy Brokers, Inc.; NUI Energy, Inc.; NUI Energy Solutions, Inc.; NUI Environmental Group, Inc.; Utility Business Services, Inc.; NUI Telcom, Inc.; and NUI International, Inc.²⁶ Finally, NUI provides sales and marketing services through TIC Enterprises, LLC, in which it owns a 49% interest.²⁷

On June 13, 2000, the Petitioners entered into a merger agreement.²⁸ The merger agreement provides alternative merger structures. If New Jersey approves NUI's proposed holding company structure prior to the completion of the merger, VGC will be merged with and into Acquisition and Acquisition will be the surviving corporation in the Merger.²⁹ Otherwise, Acquisition will merge with and into VGC and VGC will be the surviving corporation in the merger.³⁰ Either way, after the merger, NUI will own VGC's interest in VG Utilities, though the VG Utilities will each continue to operate as a separate company.³¹

Petitioners contend that the proposed merger will strengthen the ability of VG Utilities to serve their customers.³² Petitioners list the merger benefits to be realized by VG Utilities to include: (i) access to financial assistance for expansion and growth, (ii) cost savings from eliminating duplicate corporate and administrative programs, (iii) greater efficiencies in operations and business processes, (iv) streamlined marketing and purchasing practices, and (v) use of the best business practices of each company.³³

On November 22, 2000, the Staff filed its report on the proposed merger comprised of three separate sections, authored by the Division of Public Utility Accounting, the Division of Energy Regulation, and the Division of Economics and Finance. In Part A, the Division of Public Utility Accounting summarized the proposed merger and the events leading up to the merger.³⁴ Furthermore, the Division of Public Utility Accounting reported that after the merger,

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 1.

²⁹ *Id.* at 2.

³⁰ *Id.* at 1; Abramovic, Tr. at 114-15.

³¹ Exhibit MLE-4, at 2-3.

³² *Id.* at 3.

³³ *Id.*

³⁴ Exhibit RCD-9, at 1-6.

VG Utilities would continue to “adhere to their respective tariffs while fully honoring their respective obligations and commitments to customers and regulatory authorities.”³⁵ The Division of Public Utility Accounting also attempted to quantify some of the expected cost savings associated with the proposed merger, including \$760,000 related to professional services, shareholder-related expenses, Delaware franchise tax, directors’ fees and expenses, and approximately \$50,000 related to NUI’s ability to purchase insurance at a lower cost.³⁶ Based on its review, the Division of Public Utility Accounting found that “the proposed merger will not have an adverse impact on the provision of adequate service to the public at just and reasonable rates . . . and should, therefore, be approved.”³⁷ Nonetheless, the Division of Public Utility Accounting offered two qualifications. First, the Commission should require each of the VG Utilities to track and show all costs and savings related to the merger.³⁸ Second, the Commission should direct the company to apply for Commission approval if after the merger NUI discontinues operating the VG Utilities as separate companies.³⁹

In Part B, the Division of Energy Regulation reviewed other state commissions’ experience with NUI.⁴⁰ Specifically, the Division of Energy Regulation asked the staffs of the commissions in New Jersey, Florida, North Carolina, Maryland, Pennsylvania, and New York to compare companies owned by NUI to other gas companies in their states in the areas of: (i) quality of service, (ii) responsiveness to customers, (iii) economic development, and (iv) responsiveness to inquiries from their agency.⁴¹ The Division of Energy Regulation also asked the other state commissions’ staffs to give a general overall impression of NUI’s operations.⁴² Based on the positive nature of the vast majority of the comments received from the other states in which NUI currently operates, the Division of Energy Regulation concluded that the proposed merger will not significantly affect the level of the quality of service provided by VG Utilities.⁴³ Thus, the Division of Energy Regulation did not oppose the proposed merger.⁴⁴

In Part C, the Division of Economics and Finance addressed the impact of the proposed merger on the cost of capital, cost of service and rates of each of the VG Utilities.⁴⁵ To make such assessments, the Division of Economics and Finance examined and contrasted the access to capital of VGC and NUI.⁴⁶ In summary, the Division of Economics and Finance found VGC to be “technically in default which makes any type of financing as an ongoing concern very

³⁵ *Id.* at 6.

³⁶ *Id.* at 7.

³⁷ *Id.* at 9

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Exhibit MAT-10.

⁴¹ *Id.* at 1.

⁴² *Id.*

⁴³ *Id.* at 3.

⁴⁴ *Id.*

⁴⁵ Exhibit FMM-11.

⁴⁶ *Id.* at 1-4.

unlikely.”⁴⁷ By contrast, NUI has favorably rated debt with access to unused lines of credit and stock that trades on the New York Stock Exchange above book value.⁴⁸ Accordingly, the Division of Economics and Finance advised that “the proposed merger does not appear to be detrimental to the public interest and is not opposed by Staff.”⁴⁹ However, the Division of Economics and Finance raised a concern over the terms of the Petitioners’ interim financing.⁵⁰ In this regard, the Division of Economics and Finance recommended limiting any approval from extending to any affiliate financing. Staff recommends such financing be subject to a separate application and review under Chapters 3 and 4 of Title 56 of the Code of Virginia.⁵¹

On December 15, 2000, Petitioners filed the testimony of two witnesses in support of the merger. Michael L. Edwards, president and chief executive officer of VGC and president of each of the VG Utilities, offered supplemental information in support of the petition.⁵² Specifically, Mr. Edwards formally adopted the Petitioners’ responses to Staff’s interrogatories, and provided a copy of the final version of the proxy materials mailed to VGC stockholders, who approved the merger on November 8, 2000.⁵³ In addition, Mr. Edwards briefly highlighted the events leading up to the proposed merger, and outlined the potential benefits of the merger for VGC, its subsidiaries, and the ratepayers of VG Utilities.⁵⁴ Finally, Mr. Edwards agreed to comply with Staff’s recommendations regarding the tracking of merger costs and savings passed down to the VG Utilities, and agreed to make any necessary additional filing should the Commission approve the merger.⁵⁵

A. Mark Abramovic, senior vice president, chief operating officer, and chief financial officer of NUI and Acquisition, provided some history about NUI and explained its interest in the merger with VGC.⁵⁶ Further, Mr. Abramovic presented a copy of testimony he filed in North Carolina outlining anticipated cost savings associated with NUI’s proposed merger with VGC.⁵⁷ Finally, Mr. Abramovic stressed the need for expeditious regulatory approval of the proposed merger.⁵⁸

On January 5, 2001, Protestant, Andrew Gentiluomo filed a letter in which he outlined his concerns regarding the proposed merger.⁵⁹ In his letter Mr. Gentiluomo also stated his

⁴⁷ *Id.* at 4.

⁴⁸ *Id.*

⁴⁹ *Id.* at 6.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Exhibit MLE-3.

⁵³ *Id.* at 2; Edwards, Tr. at 81; Exhibit MLE-5.

⁵⁴ Exhibit MLE-3, at 2-3.

⁵⁵ *Id.* at 4.

⁵⁶ Exhibit AMA-7.

⁵⁷ *Id.* at 3 and Attachment.

⁵⁸ *Id.* at 4.

⁵⁹ Exhibit AG-8.

opposition to the VGC's proposed pipeline and argued for collocation of the pipeline in the existing easement used by Duke Energy for its gas transmission pipeline.⁶⁰

On January 10, 2001, Petitioners filed the rebuttal testimonies of Messrs. Edwards and Abramovic. Mr. Edwards responded to the protest of Andrew Gentiluomo.⁶¹ Mr. Edwards argued that the issues of concern to Mr. Gentiluomo appeared to be pipeline certification matters, which the Commission has resolved.⁶² Mr. Abramovic addressed comments submitted by the Board of Supervisors of Montgomery County, which questioned whether NUI's unregulated business interests would compromise the provision of adequate service to the public at just and reasonable rates.⁶³ Mr. Abramovic explained that there has never been a complaint with any regulatory body alleging that NUI compromised one of its regulated utilities with an unregulated business interest.⁶⁴ Moreover, Mr. Abramovic pointed out that in compliance with the comprehensive affiliate transaction rules of the New Jersey Board of Public Utilities, NUI has a compliance plan on file.⁶⁵

At the hearing, fifteen public witnesses presented testimony. Generally, these witnesses did not oppose the merger, but questioned the practices and procedures to be employed after the merger by VG Pipeline to construct the Radford to Roanoke gas transmission pipeline. As discussed elsewhere, in Case No. PUE990167, the Commission issued VG Pipeline a certificate of convenience and necessity to construct the proposed Radford to Roanoke gas transmission pipeline within a 1,000-foot corridor, which roughly runs parallel to an existing gas transmission pipeline owned by Duke Energy Company. The Commission's certificate permits VG Pipeline to construct the pipeline within a 50-foot permanent easement that must fall within the certificated 1,000-foot corridor. Most of the public witnesses that appeared at the hearing urged the Commission to require VG Pipeline to collocate its new gas transmission pipeline within the existing easement for the pipeline owned by Duke Energy.

Following is a brief summary of the testimony presented by each public witness.

Paul M. Mahoney, county attorney for Roanoke County, provided comments on behalf of the Board of Supervisors of Roanoke County.⁶⁶ While Mr. Mahoney saw benefit to the Roanoke Valley of having an alternative competitive source of natural gas, the Board wanted to express two concerns.⁶⁷ First, in an effort to control costs, the Board asks the Commission to condition the merger to require Petitioners to collocate their new pipeline in the existing East Tennessee natural gas pipeline easement.⁶⁸ Second, that any analysis of economic growth undertaken by the Commission should include tourism benefits that are the natural byproducts of

⁶⁰ *Id.*

⁶¹ Exhibit MLE-12.

⁶² *Id.*

⁶³ Exhibit AMA-13.

⁶⁴ *Id.* at 2.

⁶⁵ *Id.* at 2-3.

⁶⁶ Mahoney, Tr. at 20-24.

⁶⁷ *Id.* at 20.

⁶⁸ *Id.* at 22.

viewsheds surrounding the Blue Ridge Parkway, Poor Mountain, Twelve O'clock Knob, and other ridge lines in the Roanoke Valley.⁶⁹ Here again, the Board urges the Commission to condition the merger to encourage or even require collocation, where feasible.⁷⁰

Nancy McCord, of Blacksburg, Virginia, expressed hope that the merger would be conditioned to require the Petitioners to share the easement or expanded pipeline with Duke Power.⁷¹ Ms. McCord believed such a requirement was in the public interest because it was the least expensive alternative.⁷²

William Modica, of Salem, Virginia, raised several concerns about the merger that should be resolved before the Commission approves the proposed merger.⁷³ These concerns included whether: (i) costs associated with the merger, new construction, and NUI's corporate overhead will have an adverse impact on rates;⁷⁴ (ii) the Roanoke area needs a new gas supplier, considering Duke Power's proposed Patriot Extension line, which will tap into Transco near Martinsville;⁷⁵ (iii) NUI avoided otherwise applicable federal regulations and environmental requirements by having VGC get state approval before the merger;⁷⁶ (iv) the merger effectively eliminates Commission regulatory control of VGC;⁷⁷ (v) rates could be lowered even further by denying the merger and having NUI enter the Roanoke market with its own supplies and resources;⁷⁸ and (vi) it is reasonable to condition the merger by requiring the Petitioners to collocate the proposed new pipeline within the existing right-of-way owned by Duke Power where financially and geographically possible.⁷⁹ In support of his recommendation to require collocation of the pipeline, Mr. Modica stated, "A directive requiring NUI to negotiate in good faith to co-share the existing easement allocation would clearly be in the best interests of the public, of rate reduction, and of our environmental heritage."⁸⁰

Stacy Snyder of Christiansburg, Virginia, asserted that she owned property that will be affected by VGC's proposed pipeline and that she opposed the merger.⁸¹ Ms. Snyder opposed the merger on the grounds that VGC has violated several of the warranties and covenants of their merger agreement with NUI.⁸² Such violations include, VGC's uncertainty as a going concern,⁸³ VGC's failure to list the appeal of the Commission's decisions in Case No. PUE990167 in

⁶⁹ *Id.* at 23.

⁷⁰ *Id.* at 24.

⁷¹ McCord, Tr. at 25-26.

⁷² *Id.* at 25.

⁷³ Modica, Tr. at 26-34.

⁷⁴ *Id.* at 27-28.

⁷⁵ *Id.* at 28-29.

⁷⁶ *Id.* at 30.

⁷⁷ *Id.* at 30-31.

⁷⁸ *Id.* at 31.

⁷⁹ *Id.* at 31-34.

⁸⁰ *Id.* at 33.

⁸¹ Snyder, Tr. at 35-40.

⁸² *Id.* at 35.

⁸³ *Id.* at 36.

pending legal actions,⁸⁴ and VGC's failure to disclose pending actions with the United States Fish and Wildlife Service concerning the siting of the proposed pipeline in relation to the federally protected Smooth Coneflower, an endangered species.⁸⁵

Brent C. Riley of Roanoke, Virginia, opposed the merger because it would enable VGC to complete construction of its proposed pipeline.⁸⁶ According to Mr. Riley, the pipeline was not in the public interest because it would bring high gas rates, seriously damage the environment, and harm many private property owners.⁸⁷

Chris Caveness of Roanoke, Virginia, asked that the merger be conditioned to require NUI and Duke Energy to negotiate in good faith to collocate VGC's proposed pipeline in existing easements.⁸⁸ Moreover, Mr. Caveness advised that NUI should be informed by the Commission that the Commission has the authority to order collocation if it is denied by Duke Energy.⁸⁹ Without collocation, Mr. Caveness believed that VGC would incur unnecessary costs related to easement purchases and clear-cutting.⁹⁰

Victor Layman of Roanoke County, Virginia, opposed the merger as a means of stopping construction of the proposed pipeline.⁹¹ Underlying Mr. Layman's opposition to the pipeline was a belief that the eminent domain laws are inherently unfair to landowners.⁹²

Patti Tyree of Salem, Virginia, expressed the view that economic development in Roanoke depends upon the natural beauty of the surrounding mountains.⁹³ In addition, Ms. Tyree believed that the prices for easements eventually, after negotiation and litigation, will be much higher than the Petitioners currently plan.⁹⁴

Allen Childress of Roanoke, Virginia, addressed motives for the Petitioners seeking a separate easement rather than collocating in the existing easement.⁹⁵ In particular, Mr. Childress declared his concern that with the merger, NUI or one of its subsidiaries may use the easement to install telecommunications facilities.⁹⁶ Further, Mr. Childress stated that he owns fourteen acres, with more than one and a half acres already lost to an easement for the East Tennessee pipeline.⁹⁷

⁸⁴ *Id.* at 37-38.

⁸⁵ *Id.* at 38-40.

⁸⁶ Riley, Tr. at 41-49.

⁸⁷ *Id.*

⁸⁸ Caveness, Tr. at 50-53.

⁸⁹ *Id.* at 51-52.

⁹⁰ *Id.* at 52-53.

⁹¹ Layman, Tr. at 55-57.

⁹² *Id.*

⁹³ P. Tyree, Tr. at 58-59.

⁹⁴ *Id.* at 58-59.

⁹⁵ Childress, Tr. at 60-61.

⁹⁶ *Id.* at 60.

⁹⁷ *Id.*

If VGC takes another fifty-foot swath for its easement, then more than three acres will be lost without giving Mr. Childress access to gas service.⁹⁸

Michelle Higgins of Elliston, Virginia, urged the Commission to require the Petitioners to collocate their proposed new pipeline.⁹⁹ Like Mr. Childress, Ms. Higgins is a property owner without gas service, but with an existing easement for the East Tennessee pipeline owned by Duke Energy. The existing easement is clear, whereas VGC has proposed crossing her land on the side of a hill through “completely virgin woodland.”¹⁰⁰ Thus, Ms. Higgins stated that VGC’s separate easement “has got to be more expensive than simply using the already cleared land that Duke is offering.”¹⁰¹

Nancy Tyree of Roanoke, Virginia, reinforced two points.¹⁰² First, if the merger takes place, local jobs will be lost.¹⁰³ Second, looking to California as an example, additional gas competition does not always yield lower gas rates.¹⁰⁴

Martin McMahon, county attorney for the County of Montgomery, Virginia, testified on behalf of the Board of Supervisors for Montgomery County.¹⁰⁵ The Board’s primary concern was that after the merger, ownership and control of VGC will rest with a non-regulated holding company as opposed to a regulated utility.¹⁰⁶ As an example of how NUI’s unregulated business interests may adversely affect gas customers in Southwest Virginia, Mr. McMahon reported that VGC had used easement forms that would have allowed telecommunication facilities to be located in the easement.¹⁰⁷ Consequently, the Board strongly urged the Commission to implement measures and conditions to protect the interests of the citizens of Virginia.¹⁰⁸ Nonetheless, Mr. McMahon expressed his opinion that the “Commission would probably be hard-pressed to find that this merger would compromise or interfere with the provision of adequate service to the public at just and reasonable rates.”¹⁰⁹

Roberta Conner of Salem, Virginia, questioned what type of neighbor NUI will be if the Commission approves the merger.¹¹⁰ Specifically, Ms. Conner expressed the hope that NUI would use the environmentally friendly, economically efficient approach of collocating in preexisting easements.¹¹¹ In this regard, Ms. Conner asked the Commission to condition the

⁹⁸ *Id.*

⁹⁹ Higgins, Tr. at 62-64.

¹⁰⁰ *Id.* at 63.

¹⁰¹ *Id.*

¹⁰² N. Tyree, Tr. at 65.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ McMahon, Tr. at 66-72.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 69-70.

¹⁰⁸ *Id.* at 71-72.

¹⁰⁹ *Id.* at 68.

¹¹⁰ Conner, Tr. at 72-75.

¹¹¹ *Id.* at 74.

merger to require NUI to “collocate with the existing East Tennessee/Duke Power pipeline wherever possible.”¹¹²

Thomas Gustafson of Roanoke County, Virginia, spoke in favor of collocating the proposed new pipeline.¹¹³ Like other witnesses, Mr. Gustafson owns property crossed by the existing East Tennessee pipeline.¹¹⁴ However, unlike other witnesses, Mr. Gustafson’s property will not be crossed by Petitioners’ proposed pipeline, though Mr. Gustafson will be able to see the new line as it crosses Poor Mountain Road.¹¹⁵ Nonetheless, Mr. Gustafson recommends that the Commission “use the merger proceedings to encourage the companies to take advantage of the existing easement wherever possible.”¹¹⁶

Kristina Slowikowski of Roanoke, Virginia, further stressed the need for the Petitioners to consider collocating within any existing easements.¹¹⁷ Ms. Slowikowski owns property with an existing fifty-foot easement for the East Tennessee pipeline and a hundred-foot easement utilized by AEP electric.¹¹⁸ VGC’s initial survey would have added a third easement, essentially creating a triangle, and rendering about half, or more than five acres of the land unusable.¹¹⁹ More recently, VGC has agreed to utilize the AEP easement, reducing the size of unusable land to about three to four acres.¹²⁰ Thus, Ms. Slowikowski recommends collocation as a means of “minimizing environmental damage and further damage.”¹²¹

Both Protestants, Messrs. Mason and Gentiluomo echoed the positions of the public witnesses. Mr. Mason called upon NUI to work closely with businesses and citizens to bring needed services in a manner that balances necessity, cost, competition, aesthetics, and environmental concerns.¹²² Mr. Gentiluomo asked the Commission to assess the impact the merger will have on just and reasonable rates.¹²³

Finally, in answer to questions by the Protestants, Petitioners agreed to provide a comparison of the cost of collocating its proposed pipeline in the existing easement owned by Duke Energy with the cost of constructing its proposed pipeline in a separate, exclusive easement as a late-filed exhibit.¹²⁴ On February 7, 2001, Petitioners filed its analysis, which compares cost estimates from two scenarios.¹²⁵ First, Petitioners estimated the cost of

¹¹² *Id.* at 75.

¹¹³ Gustafson, Tr. at 75-76.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Slowikowski, Tr. at 77-78.

¹¹⁸ *Id.* at 77.

¹¹⁹ *Id.* at 78.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Mason, Tr. at 192.

¹²³ Gentiluomo, Tr. at 144.

¹²⁴ Edwards, Tr. at 85-86.

¹²⁵ Exhibit MLE-6.

constructing the entire 45.34-mile pipeline in an exclusive easement within its certificated 1,000-foot corridor.¹²⁶ Next, Petitioners estimated the cost of collocating 42.4 miles of pipeline within the existing easement for the East Tennessee pipeline owned by Duke Energy and constructing 4.5 miles of pipeline in an exclusive easement at the terminus of the pipeline.¹²⁷ Petitioners note that in its second scenario, approximately 13.8 miles of the pipeline would be built outside the 1000-foot corridor approved by the Commission.¹²⁸ Petitioners' cost estimates for these two scenarios are shown below:¹²⁹

Cost Activity	VG Pipeline Exclusive Easement	Collocation	Cost Difference
Land/Legal/Duke	\$ 4,500,000	\$ 9,570,000	\$ 5,070,000
Construction	11,635,000	16,380,000	4,745,000
Survey	718,200	1,390,000	671,800
Pipe	1,800,300	1,862,400	62,100
Total	\$ 18,653,500	\$ 29,202,400	\$ 10,548,900

DISCUSSION

Virginia Code § 56-90 sets forth the legal standard that the Commission must apply to petitions filed pursuant to the Utility Transfers Act as follows:

If and when the Commission . . . shall be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition, the Commission shall make such order in the premises as it may deem proper and the circumstances require

In carrying out the General Assembly's mandate to insure that a proposed merger will not impair or jeopardize adequate service to the public at just and reasonable rates, the Commission has imposed conditions on merging companies. For example, in the recent Bell Atlantic Corporation and GTE Corporation merger, the Commission adopted several conditions and commitments, including extending rate caps and establishing minimum levels of capital expenditures.¹³⁰ Other recent examples of the Commission conditioning a merger petition include the mergers of Dominion Resources, Inc. and Consolidated Natural Gas Company;¹³¹

¹²⁶ *Id.* at 1.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Joint Petition of Bell Atlantic Corporation and GTE Corporation For approval of agreement and plan of merger*, Case No. PUC990100, 1999 S.C.C. Ann. Rep. 321 ("BA/GTE").

¹³¹ *Joint Petition of Dominion Resources, Inc. and Consolidated Natural Gas Company For approval of agreement and plan of merger under Chapter 5 of Title 56 of the Code of Virginia*, Case No. PUA990020, 1999 S.C.C. Ann. Rep. 169 ("DRI/CNG").

and Washington Gas Light Company and Shenandoah Gas Company.¹³² In all of these cases, the Commission exercised authority to condition mergers in order to assure that “adequate service to the public at just and reasonable rates will not be impaired or jeopardized.”¹³³

In Case No. PUE990167, the Commission decided that it was in the public interest for VG Pipeline to construct its proposed gas transmission pipeline. Thus, for this case, “adequate service to the public” includes expansion of VG Pipeline’s facilities and its need to raise capital. All parties appear to agree that VGC currently is in default on its debt obligations and is unlikely to be able to raise sufficient new capital at reasonable rates. Furthermore, all parties also appear to agree that the NUI merger will give VG Pipeline and the other VG Utilities access to new capital at favorable rates. Indeed, there are only four issues that have been raised that indicate the need to condition the merger to assure that adequate service to the public at just and reasonable rates will not be impaired or jeopardized. These issues include: (i) quantification of costs and savings related to the merger; (ii) continued operation of the VG Utilities as separate companies unless otherwise approved by the Commission; (iii) requirements for separate Commission approval under Chapters 3 and 4 of Title 56 of the Code of Virginia for any affiliate financing or guarantees; and (iv) whether the Commission should require Petitioners to collocate VG Pipeline’s proposed new gas transmission line within existing easements where feasible.

Of these four issues, the Petitioners already have agreed to condition the merger to resolve the first three. That is, Petitioners have agreed to quantify all of the costs and savings related to the merger assigned to the VG Utilities,¹³⁴ continue to operate the VG Utilities as separate companies unless otherwise approved by the Commission,¹³⁵ and seek Commission approval under Chapters 3 and 4 of Title 56 of the Code of Virginia for any affiliate financing or guarantees.¹³⁶ These conditions, along with the Commission’s statutory authority, provide the Commission with the means of protecting the interests of the Virginia customers of VG Utilities, even though these companies ultimately are owned and controlled by a non-regulated foreign holding company.

As to the fourth issue concerning collocation, Petitioners argue that they should not be required to collocate within existing easements as a merger condition because such a condition is unrelated to the statutory standard of adequate service at just and reasonable rates, and because the location of VG Pipeline’s proposed new gas transmission line was dealt with in Case No. PUE990167.¹³⁷

¹³² *Petition of Washington Gas Light Company and Shenandoah Gas Company For authority pursuant to the Public Utilities Affiliates Act, §§ 56-76 et seq. of the Code of Virginia, the Utility Transfers Act, §§ 56-88 et seq. of the Code of Virginia, and the Utility Facilities Act, §§ 56-265.1 et seq. of the Code of Virginia, to merge Shenandoah Gas Company with and into Washington Gas Light Company*, Case No. PUA990071, 1999 S.C.C. Ann. Rep. 216 (“WGL/Shenandoah”).

¹³³ *BA/GTE* at 321; *DRI/CNG* at 171; *WGL/Shenandoah* at 217.

¹³⁴ Exhibit MLE-3, at 4.

¹³⁵ *Id.*; Exhibit AMA-7, at 4.

¹³⁶ Abramovic, Tr. at 115.

¹³⁷ Nolte, Tr. at 197-98.

The testimony of the Petitioners, Protestants, and public witnesses demonstrates there are many factors that must be considered in deciding whether to collocate pipelines. Some of these factors, such as costs to purchase the easement, clearing and excavating, and the type of equipment and construction techniques may have a direct bearing on costs and, eventually, rates. Other environmental and economic related factors may have an indirect but, long-term effect on rates. Therefore, I find that the question of collocation falls squarely with the statutory requirement and inquiry of the Utility Transfers Act.

Furthermore, the certificate issued by the Commission to VG Pipeline in Case No. PUE990167, to construct a gas transmission pipeline from Radford to Roanoke, established a 1000-foot, 57.4-mile corridor within which VG Pipeline has the right to construct its pipeline.¹³⁸ The Commission's order approving the certificate did not specify where within the 1000-foot corridor the pipeline was to be located. Consequently, VG Pipeline can locate its new pipeline within its own easement or collocate within any existing easements.

Moreover, the General Assembly has established a public policy within the Commonwealth, requiring public service companies, such as VG Pipeline, to consider the feasibility of collocating **prior to acquiring any easement** and has granted the Commission broad authority to carry out this policy. More specifically, Virginia Code § 56-259 provides as follows:

Prior to acquiring any easement or right-of-way, public service corporations will consider the feasibility of locating such facilities on, over, or under existing easements or rights-of-way. In the event any public service corporation owning a right-of-way shall deny a request of any other public service corporation for joint use of that right-of-way, the corporation whose request is denied shall have the right, within thirty days after the denial to apply to the Commission for an order requiring such joint use. The Commission shall conduct a hearing on such application and shall direct the corporation owning the right-of-way to allow joint use if the Commission finds that such joint use is reasonable and that the present or future public utility service of such corporation will not be adversely affected by such joint use. In making such determination, the Commission may establish the terms and conditions for such joint use, including, without limitation, a requirement of compensation by the utility making the request to the utility owning the right-of-way, if the Commission finds such a requirement to be appropriate.

In its late-filed exhibit comparing the costs of constructing a pipeline in an exclusive easement and collocating, Petitioners assert that collocation is more expensive on an end-to-end

¹³⁸ *Application of Virginia Gas Pipeline Company For Certification of a Natural Gas Transmission Line under the Utility Facilities Act*, Case No. PUE990167, 1999 S.C.C. Ann. Rep. 475.

basis because collocation would require re-certification, slower and more dangerous construction, and greater future liability.¹³⁹ While I find the Petitioners' analysis helpful, I do not find that it demonstrates that VG Pipeline has considered collocation as an option prior to purchasing or attempting to purchase each easement along its path. Put simply, the analysis fails to answer the precise question in this case: Are there places within the 1000-foot certificated corridor where collocation is feasible and more economically efficient?

Therefore, I find that the proposed merger should be conditioned to require Petitioners to consider collocation of VG Pipeline's gas transmission pipeline prior to purchasing any new easement and to collocate within its existing certificated corridor where it is feasible and more economically efficient. Special consideration for collocation should be made where a new easement would have a significant impact on a scenic or environmentally sensitive area, and where the easement crosses property with existing easements.

Based upon the record of this case, and subject to the three conditions already agreed to by Petitioners and subject to considering collocation, I find that the Petitioners' proposed merger should be approved.

Accordingly, **I RECOMMEND** that the Commission enter an order:

(1) **ADOPTING** my findings;

(2) **APPROVING** the agreement and plan of merger between NUI, Acquisition, and VGC subject to the following conditions:

(a) that Petitioners will quantify all costs and savings related to the merger assigned to VG Distribution, VG Storage, and VG Pipeline;

(b) that Petitioners will continue to operate VG Distribution, VG Storage, and VG Pipeline as separate companies unless otherwise approved by the Commission;

(c) that Petitioners will seek Commission approval under Chapters 3 and 4 of Title 56 of the Code of Virginia for any affiliate financing or guarantees related to VG Distribution, VG Storage, and VG Pipeline; and

(d) that prior to purchasing any new easements related to the construction of VG Pipeline's new gas transmission pipeline, Petitioners will consider collocating within its existing certificated corridor where it is feasible and more economically efficient. Petitioners will give special consideration for collocating where a new easement would have a significant impact on a scenic or environmentally sensitive area, and where the easement crosses property with existing easements; and

(3) **DISMISSING** this case from the docket of active matters.

¹³⁹ Exhibit MLE-6, at 10.

COMMENTS

The parties are advised that pursuant to Rule 5:16(e) of the Commission's Rules of Practice and Procedure,¹⁴⁰ any comments to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen copies, within fifteen days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P. O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document that copies have been mailed or delivered to all other counsel of record and to any party not represented by counsel.

Respectfully submitted,

Alexander F. Skirpan, Jr.
Hearing Examiner

¹⁴⁰ 5 VAC 5-10-420 F.